

KANTOR, DAVIDOFF, WOLFE, MANDELKER,  
TWOMEY & GALLANTY, P.C.  
By: Matthew C. Kesten (MK-6099)  
Attorneys for Defendants  
51 East 42<sup>nd</sup> Street, 17<sup>th</sup> Floor  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
OMAR ORDAZ,

Plaintiff,

Case No. 12 Civ. 8121  
(CM)(GWG)

- against -

BARRY'S BOOT CAMP, JOSEPH GONZALEZ  
and SHMULIK SHARON,

**ANSWER**

Defendants.  
-----X

Defendants Barry's Bootcamp NYC LLC (s/h/a "Barry's Boot Camp"), Joseph Gonzalez and Shmulik Sharon (hereinafter referred to individually as "Barry's", "Gonzalez" and "Sharon" and collectively as "Defendants"), by their attorneys, Kantor, Davidoff, Wolfe, Mandelker, Twomey & Gallanty, P.C, as and for their Answer to the Complaint herein, allege as follows:

1. Defendants deny the allegations contained in paragraphs 1, 2, 9, 14, 15, 17, 22, 27, 28, 29, 31, 32, 33, 34, 35, 38, 41, 42, 43, 44, 45, 46, 54, 55, 56, 57, 58, 59, 60, 64, 65, 66, 67, 69, 74, 75, 76, 77, 78 and 79 of the Complaint.

2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7, 36 and 40 of the Complaint.

3. Defendants neither admit nor deny the allegations contained in paragraphs 23, 49, 50, 51, 52, 53, 62, 63, 68, 71, 72 and 73 of the Complaint, as said paragraphs

contain legal conclusions (as opposed to factual allegations) to which Defendants are not required to respond, but Defendants nonetheless affirmatively deny any allegation or suggestion contained in the Complaint that they engaged in any unlawful or improper conduct with regard to the plaintiff.

4. Defendants deny the allegations contained in paragraph 8 of the Complaint, except admit that Barry's is a domestic limited liability company with offices located in the City, County and State of New York.

5. Defendants deny the allegations contained in paragraph 9 of the Complaint, except admit that Gonzalez has a residence in the City, County and State of New York.

6. With regard to paragraph 10 of the Complaint, Defendants admit that Sharon is an individual, but deny knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff is unaware of his current residence.

7. Defendants deny the allegations contained in paragraph 12 of the Complaint, except admit that Barry's is a health club which provides services typically associated with a health club and that it advertises itself as providing the best workout in the world.

8. Defendants deny the allegations contained in paragraph 16 of the Complaint, except admit that Gonzalez has input with regard to the hiring, assignment and compensation practices of Barry's.

9. Defendants admit the allegations contained in paragraph 18 of the Complaint, except deny any allegation or suggestion that Defendants engaged in any unlawful or improper conduct with regard to the plaintiff.

10. Defendants deny the allegations of paragraphs 20 and 21 of the Complaint, except admit that Sharon acted as manager of the facility for which plaintiff provided

services and that he had input with regard to Barry's employees, hiring, termination, work schedules and assignments.

11. Defendants deny the allegations contained in paragraph 24 of the Complaint, except admit that plaintiff was engaged as an independent contractor to provide services on behalf of Barry's for which he was fully compensated.

12. Defendants deny the allegations contained in paragraph 25 of the Complaint, except admit that Gonzalez was the individual associated with Barry's who engaged plaintiff as an independent contractor to provide maintenance services on behalf of Barry's for which he would be compensated.

13. Defendants deny the allegations contained in paragraph 26 of the Complaint, except admit that plaintiff was engaged as an independent contractor to provide services on behalf of Barry's at an agreed upon rate of compensation of \$10 per hour for all hours during which plaintiff provided services.

14. Defendants admit the allegations contained in paragraph 30 of the Complaint, except deny any allegation or suggestion that plaintiff worked "overtime" or that Defendants were or are obligated to provide additional compensation to plaintiff.

15. Defendants deny the allegations contained in paragraph 37 of the Complaint, except admit that Sharon terminated plaintiff and that, upon information and belief, Gonzalez was aware that plaintiff's services were to be terminated.

16. With respect to paragraphs 39, 47, 61 and 70 of the Complaint, Defendants repeat and reiterate the allegations set forth above, as if fully set forth herein.

**AS AND FOR AN AFFIRMATIVE DEFENSE**

17. The Complaint fails to state a claim upon which relief may be granted.

WHEREFORE, Defendants respectfully demand judgment in their favor and against plaintiff:

1. Dismissing the Complaint;
2. Awarding Defendants their costs and disbursements incurred herein; and,
3. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
December 28, 2012

KANTOR, DAVIDOFF, WOLFE, MANDELKER,  
TWOMEY & GALLANTY, P.C.  
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TO:

LEVIDOW, LEVIDOW & OBERMAN, P.C.  
Attn: Peter LoDuca, Esq.  
Attorneys for Plaintiff  
299 Broadway, Suite 1800  
New York, New York 10007  
(212) 964-3290

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
OMAR ORDAZ,

Docket No. 12 Civ. 8121

Plaintiff

- against -

**AFFIDAVIT OF SERVICE**

BARRY'S BOOT CAMP, JOSEPH GONZALEZ  
and SHMULIK SHARON

Defendants.  
-----X

STATE OF NEW YORK     )  
                                  : ss.:  
COUNTY OF NEW YORK )

**CAROLYN ALVARADO**, being duly sworn, deposes and says:

1. I am not a party to this action, I am over 21 years of age and reside in New York, New York.

2. On the 28<sup>th</sup> day of December, 2012, I served the within **ANSWER** by mailing a true copy, by First Class mail, to each of the following persons at the last known address set forth after each name:

LEVIDOW, LEVIDOW & OBERMAN, P.C.  
Attn: Peter LoDuca, Esq.  
Attorneys for Plaintiff  
299 Broadway, Suite 1800  
New York, New York 10007

  
\_\_\_\_\_  
Carolyn Alvarado

Sworn to before me this  
28<sup>th</sup> day of December, 2012

  
\_\_\_\_\_  
Notary Public

SHAHILY NEGRON  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01NE6229403  
QUALIFIED IN BRONX COUNTY  
COMMISSION EXPIRES OCT. 12, 20 14